

**APPEAL BY THE SEATTLE DISPLACEMENT COALITION AND THE INTERFAITH  
TASK FORCE ON HOMELESSNESS OF HOUSING PORTIONS OF FINDINGS AND  
RECOMMENDATION OF THE HEARING EXAMINER FOR THE CITY OF  
SEATTLE IN THE MATTER OF THE APPLICATION OF SEATTLE CHILDREN'S  
HOSPITAL FOR APPROVAL OF A MAJOR INSTITUTION MASTER PLAN CF  
308884**

**To: City Clerk and  
To: Seattle City Council**

**August 25, 2009**

The Displacement Coalition and the Interfaith Task Force on Homelessness submit this appeal in response to Seattle Children's choice in its proposed Master Plan to demolish one of the most attractive, desirable, largest, and affordable multifamily housing options in the Laurelhurst community, the 136 unit Laurelon Terrace Apartments. We strongly support the Examiner's recommendation of denial of Children's over-all Master Plan proposal. However, in the event that the Examiner's denial recommendation is not followed by Council, then, as explained below, Children's should be held to the full replacement of comparable housing that is required by Code.

The Seattle Displacement Coalition is a 32 year old non-profit housing and homeless advocacy group made up of low income people, the homeless, Seattle residents, and representatives of housing and social services organizations from across the City. We have had years of experience advocating for the needs of low income people and the homeless in our city and on numerous occasions represented their interests in quasi-judicial hearings before the City Hearing's Examiner and City Council. Our membership includes residents in NE Seattle and the Laurelhurst Community.

Our organization has also advocated on many occasions for passage of city laws and policies aimed at preserving what remains of our declining low income housing stock and on occasions when that housing is removed due to redevelopment, our goal has been to make sure that developers replace 1 for 1 any housing they remove and at comparable rent.

Our organization has had input and been instrumental in shaping virtually every policy now in place at City Hall over the last 30 years addressing the loss of our existing low income stock due to private and public sponsored redevelopment including the current set of conditions addressing housing loss when institutions expand under terms of the major institutions plan ordinance. Our organization has been directly involved in development of the requirement for comparable replacement of housing demolished by expanding major institutions as well as in other City resolutions and laws mandating housing replacement (such as SHA HOPE VI requirements, the new incentive zoning ordinance, and the multi-family tax exemption (MFTE) program).

The Interfaith Task Force on Homelessness was officially convened in December 2001 and has partnered with the Seattle Displacement Coalition, the Church Council of Greater Seattle, the Archdiocesan Housing Authority, and other organizations. The organization works regionally to bring leadership and members of faith communities together to do advocacy for increased public

funding for low income housing and homeless programs. The group also advocates at state, county, and municipal levels to promote legislation that prevents housing losses due to displacement and gentrification. Our members and supporters include people who live in Seattle and Northeast Seattle where Children's Hospital is located.

We understand that the Hearing Examiner's considered recommendation is that the City Council denies Children's application. We are not appealing that recommendation.

We are appealing the portions of the August 11, 2009 Findings and Recommendations concerning housing, which were included by the Examiner as fallbacks in the event that the Council did not accept her overriding conclusion that the application must be denied. The housing portion in the alternative (to denial) of the Examiner's findings and recommendation represents a fundamental error in applying the Major Institution Code provision discouraging housing demolition and requiring that the institution – not the City – provide comparable replacement of units demolished. The Hearing Examiner erred in not requiring one for one replacement by the institution and instead accepting arguments by Children's and its City allies that will allow Children's credit for housing replacement actually paid for by scarce public dollars including City housing funds.

This is a direct taxpayer subsidy in the millions of dollars for Children's expansion plans. It would misallocate limited public and City funds that are dedicated by ordinances, resolutions, and tradition exclusively for the purpose of expanding our overall housing stock and not to assist developers or institutions seeking to fulfill housing replacement obligations they may have under various city laws including the Major Institutions Code. Taxpayer dollars are for expanding our affordable housing stock to meet Seattle's pre-existing overall housing needs – not to address those needs newly created by a major institution's choice of an expansion plan requiring demolition of 136 units of existing housing.

Because of its direct impacts as well as the adverse precedent it will set, our members and the homeless constituencies we represent will be substantially affected by the outcome here. Therefore, we are appealing to the City Council the Examiner's fallback findings and recommendations regarding Children's housing replacement obligation under the Master Plan Code. This appeal consequently encompasses the Housing portions of the Hearing Examiner decision including those paragraphs numbered 105-121 at pages 19-21 of the Examiner's Findings, paragraphs numbered 29-35 at pages 26-28 of the Examiner's Conclusions, and Housing Memorandum of Agreement attached at pages 43-48 of the Examiner's decision.

The following provides a summary of points that support our appeal. Following their presentation, we suggest how the Council should address the question of housing replacement in the event that, over our objections, the Council departs from the Examiner's strong recommendation for denial of Children's over-all application.

There will be a significant housing impact if the 136 Laurelon Terrace condominium units are demolished and not replaced. The Final EIS (as revised by DPD and Children's after the Examiner

found the first version inadequate with regard to housing) and the additional materials in the Hearing Examiner record place this conclusion beyond debate.

Per Examiner Finding 105:

“Major institutions may **not** expand their boundaries if the expansion would result in demolition of residential structures ‘unless comparable replacement is proposed to maintain the housing stock of the city.’” SMC 23.24.124 B.7 [bold added]

However, until the publication of the Revised FEIS ordered by the Examiner, there was very little information about the actual cost of replacing the demolished Laurelon Terrace units or how many units Children's vague "contribution" to replacement would fund. Statements in the draft EIS and other documents led the reviewer to believe that Children's would "maximize" and even possibly exceed its requirement to replace 136 units. See, for example, Draft EIS, p. 3.8-6.

Subsequent information in the Revised FEIS and presented in the Examiner's public hearings reveal that, under Children's housing mitigation plan, it is Children's pocket-book that would be maximized — not replacement housing. Piecing together the fragments of housing cost information in the Revised FEIS, it is clear that there will be an enormous chasm between the amount of money it will cost to provide comparable replacement of 136 units as required under the Master Plan Code and the \$5 million that Children's is offering in fulfillment of its replacement obligation.

The Hearing Examiner errs (see paragraph 30 of Examiner's Conclusions p. 28 of her decision) when she describes as “ambiguous” language in the Code requiring that, “to maintain the housing stock of the City” the institution must step up to “comparable replacement” of the housing it chooses to demolish. In simple terms, no reasonable standard of comparability is satisfied by demolishing 136 units and paying only enough to build 25 replacement units.

As the Coalition, through its Director John Fox, testified to the Examiner, the Coalition was directly involved in development of the Major Institutions housing replacement requirement. The language was written to ensure that the developer/institution was obligated to replace 100 percent of the housing they removed and that no public or city funds would be used for meeting the developer/institution's obligation. Institutions were free to fulfill their replacement obligations thru a combination of private grants, bank financing, donations, etc. so long as no public dollars from any public source would be credited against such private obligations.

Any other interpretation, crediting taxpayer funding from any dedicated public source (city, state, county, or federal) toward housing replacement necessitated by private applicant demolitions would shift responsibility onto the shoulders of the public and simply be a case of “robbing Peter to pay Paul”. Limited taxpayer dollars that otherwise would be used to maintain (or even expand) housing stock in our city instead would be reprogrammed to help Children's fulfill its replacement obligation. The whole point behind the language holding an institution/applicant responsible for

comparable replacement of demolished housing was to preclude this foisting of responsibility onto the public.

The Hearing Examiner does not clearly acknowledge in her findings that under its Plan, Children's will only be replacing a small fraction — fewer than 20% — of the units it plans to demolish. This is because Children's and the City have crafted a two-tiered scheme that significantly and artificially reduces Children's housing replacement obligation and the number of units that will be replaced. It credits Children's with a substantial number of units that it does not fund. The Revised FEIS shows that:

- Children's is credited with 52 units of replacement housing in return for only a \$600,000 contribution to a Solid Ground project (Revised FEIS, p. 3.8-13), even though this amount of money would actually only fund 2.2 units given total project costs showing a per unit cost of \$270,407 per unit. This is a credit of 24 units for every 1 actually funded by Children's —an outrageously disproportionate ratio that is simply not acknowledged by the Hearings Examiner.
- For Children's remaining \$4.4 million contribution, it would get credit for 84 replacement units (Revised FEIS, p. 3.8-13/14), even though this amount would actually only fund 16.3 units based on a per unit cost of \$270,407 ( $4,400,000/270,407 = 16.3$ ). This is a replacement credit of 5 units for every 1 actually funded by Children's.

The result of the two-tiered crediting scheme disclosed in the RFEIS is that Children's \$5 million mitigation would actually only fund, and thus replace, a total of 18.5 units — or about 14% of the 136 units that it will actually demolish. Children's gets credit for about 7 units for every one it actually replaces. The burden of replacing the remainder would be left to fall on the public's shoulders. This fails any reasonable interpretation of the intent behind the comparable replacement language contained in the code.

The Hearing Examiner's decision does not clearly acknowledge this or that the amount of the institution's actual contribution does not produce anywhere near the number of units that are required to mitigate the significant housing impact that would be caused by the demolition of Laurelon Terrace.

Ironically, the Children's housing replacement/credit scheme even falls short of the "25% gap financing" standard offered as appropriate in the City's Revised FEIS as justification for Children's payment of \$5 million supposedly in total satisfaction of its replacement obligation.

This "25% gap financing standard" itself has no basis in the Code's comparable replacement housing requirement or in SEPA impact mitigation. The Hearing Examiner notes that the Executive's Office of Housing has decided that Children's Hospital is only obligated to fill a "financing gap" normally filled by the City and that by doing so Children's will fulfill its obligation under the Code. The theory is that filling such a financing gap causes to be built units equal in number to those that Children's will demolish. The gap contribution deemed acceptable here is \$50,000 per unit — far less than the actual cost of replacement. The

Executive's Office of Housing advocated for acceptance of this figure because it said this is what the City on average contributes towards the production of a unit created under the current levy program.

In accepting this logic in her fallback housing conditions, the Examiner defers completely to the Executive's housing office, giving it near total discretion to determine what constitutes comparable housing. She in effect endorses DPD's testimony that it made no independent evaluation of Children's replacement contribution, but just accepted what it was told by the Executive's Office of Housing: that a deal had been made under which Children's would only have to pay \$5 million to replace housing with an assessed value of approximately \$30 million. Per the hearing record, after negotiations between the Executive's housing office and Children's over how much Children's would pay, a number was arrived at and then communicated to DPD as a done deal. This accords the Executive's housing office a level of authority for a major institutions land use application not mentioned or recognized in the Major Institutions Code at all.

The language of the Code itself as well as Displacement Coalition testimony about its origins reflect that there was and is no mention or reference in any way to the concept of gap financing. Nor were there any discussions or even mention that gap financing was to be defined as the amount the City on average contributes towards a production of a unit of affordable housing or that the developer would be required to pay only that amount for every unit demolished. These concepts, tending to reduce the cost to an institution of its replacement obligation, could have been introduced into the Code language at the time of adoption in 1994, but they were not.

Even if one accepted the notion of "gap financing" offered by the Office of Housing, then the developer must still be held accountable to fill the full gap normally filled by all government sources, not just the City's contribution. This is significant because the City's contribution of \$50,000 on average towards replacement of a demolished unit accounts for less than 25% of a unit's replacement value.

As explained in data (Exhibit R-19) provided by John Fox of the Displacement Coalition in the public hearing record, without contradiction, the actual total government contribution from all sources on average accounts for much more than 25% of the cost of a unit. In fact, government sources (city, county, state, federal) have accounted for 41.4% of each unit the city has caused to be created under the current levy program since 2002. It is that 41% government contribution that was necessary to produce 1814 units created under the city's housing levy program since 2002. Therefore, it is this larger amount, 41% -- not 25% -- that would represent Children's obligation if one even accepted the idea that Children's replacement obligation under the Code can be reinterpreted to only require gap financing.

Per the data in Exhibit R-19, on average each of those 1814 units, for which government sources contributed 41%, cost \$221,609 to produce. Therefore, if the notion is to be accepted at all that comparable replacement - which costs at least (and in the case of Laurelon Terrace more than ) \$221,609 per unit -- can be satisfied by "gap financing", then Children's must be held accountable for the actual "gap", replacing the full amount that government on average would

pay. Multiplying the 136 units Children's would demolish by \$91,000 (approximately 41% of the \$221,609 per unit cost) equals \$12,376,000. While this is far less than the comparable replacement actually required by the Code, it is far more than the \$5 million that the Executive Office of Housing decreed to DPD would be all that Children's would have to pay as a result of its choice to demolish 136 units of housing.. Again, if the "gap" scheme – which is not found in the Code at all – is nevertheless accepted, then \$12,376,000 is the minimum amount Children's must pay if it is to actually fill the financing gap.

It is arbitrary and lacks any connection to the intent of the Code to decide that Children's Hospital need only contribute \$50,000 per unit towards replacement because that is what the City on average pays out per unit. This standard bears no relationship to the full amount (the true financing gap) from government sources to produce a unit of affordable housing. The record clearly demonstrates this and makes it clear that the Executive's Office of Housing cut a deal with Children's. That deal set the amount Children's would pay for demolishing 136 units of housing at no more than \$5 million. The Executive's Office of Housing then worked backward from that amount finding straw arguments to justify a deal that bears no relationship to the Code or to any reasonable interpretation of the Code's intent.

The string of indulgences given Children's in connection with its demolition of 136 units of housing does not end with the faulty math of the "gap financing" scheme described above. Even once a diminished \$50,000.00 per unit replacement obligation is accepted, as the Examiner ultimately did, Children's still comes up \$1,600,000 million short (\$50,000 times 136 is \$6,800,000 – not \$5,000,000). To address this, Children's and the Executive's Office of Housing came up with an excuse which, while expedient, would set an extremely harmful precedent by allowing an applicant to credit development site acquisition costs against housing replacement obligations. As the rationale goes, Children's should be credited here with a \$1,800,000 reduction in its replacement housing obligation because Children's will spend approximately \$30 million dollars to acquire the site where the 136 affordable condominium units would be demolished. The theory is that this payout to acquire the site represents some kind of relocation assistance provided to the owners of the 136 units.

There is nothing in the Master Plan Code replacement housing requirement or in analogous provisions in other portions of the Code that would allow a developer to offset housing replacement obligations with either site acquisition or supposed relocation assistance. In fact, in city and state law, relocation assistance always is separated from any replacement obligation a developer may be required to assume. Otherwise, it would be far too easy for an applicant to use site acquisition costs – which are a cost of doing business and incurred in every project – as an offset to wipe out all or a substantial portion of displacement and relocation obligations.

It would be completely inconsistent with the Code, set a dangerous precedent, and completely defeat the purpose of comparable replacement housing legislation to give credit, whether partial or full, for developers' costs of site acquisition and to allow developers to deduct that amount from their replacement obligation. As the Coalition testified before the Hearings Examiner, then every developer/institution could easily obtain relief from their replacement obligation simply by citing the amount they paid to purchase the property they were intending to redevelop.

Further, as all witnesses before the Examiner conceded, none of the pay-outs to owners of the 136 Laurelon Terrace units are obligated to be used by the recipients for creation of replacement units in Seattle nor are those dollars required in any way to be used for maintenance of Seattle's housing stock. In short, the pay-outs have no committed relationship to the requirements of the Major Institutions Code for housing replacement.

The Major Institutions Code reflects a decision that comparable replacement must be required without regard to site acquisition expense. The fact that the developer here is Children's Hospital does not change this. If the City wishes to subsidize certain developers' (major institutions') compliance with the Code, it can do so by amending the Code and announcing that choice to the public. The public will then know where its scarce housing dollars have been allocated at a time when the City faces almost a \$100 million dollar budget shortfall and a growing shortage of low income and affordable units. However, doing so in the fashion accomplished here, by backroom deals and twisted logic imposed on DPD and the Hearing Examiner by the Executive's Office of Housing, is erroneous.

In conclusion, the Council should uphold the Examiner's strong denial recommendation: if the Council does so Children's may well make a better choice than to insist on a plan that demolishes 136 units of housing.

If the Council determines not to uphold the Hearing Examiner's denial, then the Council should uphold this appeal of the Hearing Examiner's interpretation of the comparable replacement housing requirement. That interpretation is in conflict with the underlying intent of the Code, is not supported by the subsequent history and adoption of replacement language now contained elsewhere in city law, and would set a dangerous precedent undermining the Code's housing replacement requirements and turning them into vehicles for city-subsidies of private projects. Children's should therefore be held to the full replacement of comparable housing as required by the Code.

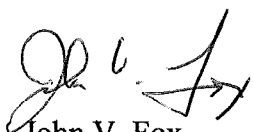
To accomplish this (again, in the event that the Council does not uphold the Examiner's well-reasoned denial recommendation) the Council should adopt modified conditions including ones as described below:

- Children's should be held responsible for full replacement of 136 units. To meet that 100 percent obligation, Children's must:
  - 1) make an in-lieu payment to the City equal to the full replacement cost of the housing it will demolish. At \$221,609 per unit (again the average cost per unit for housing built under the City's levy program) times 136, this amount is \$30,138,824; OR
  - 2) in the alternative, partner with a non-profit housing developer and itself provide full (\$30,138,824) funding for construction of replacement housing.

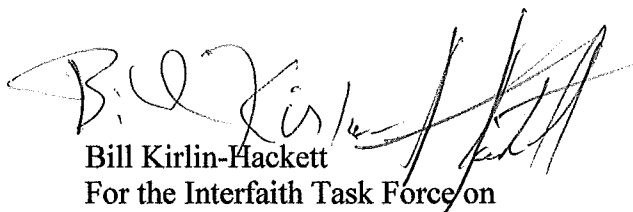
- If the Council accepts the notion of “gap financing”, Children’s must itself pay 100 percent of the actual 41% gap otherwise filled by government funds, here \$12,376,000 (136 units times \$91,000). That amount should be paid to the City in the form of a cash contribution to be used for low income and affordable housing developments. No reduction or offset should be allowed for development site acquisition or relocation costs.

Please make sure that we are provided notice of all deadlines, filings, meetings, hearings, and occurrences concerning our appeal and/or the Council’s consideration the Children’s Master Plan application.

Respectfully submitted,



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